LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 16 1963
JOHN F. DAVIS, CLERK

No. 1028

In the Supreme Court of the United States

OCTOBER TERM, 1962

MAJOR OIL DEVELOPMENT COMPANY ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA AND SECURITIES
AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington 25, D. C.

PETER A. GAMMERMAN,
General Counsel,
Securities and Exchange Commission,
Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1029

MAJOR OIL DEVELOPMENT COMPANY ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA AND SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners requested the Securities and Exchange Commission to answer 22 hypothetical questions relating to certain statutory exemptions from the registration requirements of the Securities Act of 1933 (App., A 1 - A 5*). The Commission replied that it would not render advisory opinions on hypothetical

---

* "App." refers to the appendix to respondents' memorandum in the court of appeals in support of the motion to dismiss. The memorandum and appendix have been filed with this Court.

questions, but that its staff would give its views on the legality of any particular transaction as to which petitioners would submit in writing full details, including the persons and companies involved (App. A 6). Petitioners subsequently again requested the Commission to rule on similar hypothetical questions (App. A 7 - A 11). Upon the Commission's failure to do so, petitioners filed in the Court of Appeals for the Tenth Circuit a petition for a declaratory judgment or, alternatively, for review of the Commission's refusal to answer the questions. On the respondents' motion, the court dismissed the petition (Pet. App A).

This ruling was plainly correct, and there is no occasion for review by this Court. The decision whether to issue a declaratory ruling lies within the sound discretion of the Commission (see Section 5 (d) of the Administrative Procedure Act, 5 U.S.C. 1004(d)); and in declining to answer the hypothetical questions asked by the petitioners the agency neither abused its discretion nor entered any reviewable order. The court of appeals therefore correctly dismissed the petition for review. See Section 9(a) of the Securities Act of 1933, 15 U.S.C. 77i(a), which provides for judicial review only of agency "orders," and Section 10 of the Administrative Procedure Act, 5 U.S.C. 1009, which excepts from the judicial review provisions under that Act any agency action which "is by law committed to agency discretion"; *Crooker* v. *Securities and Exchange Commission*, 161 F. 2d 944, 949 (C.A. 1); *Leighton* v. *Securities and Exchange Commission*, 221 F. 2d 91 (C.A. D.C.),

certiorari denied, 350 U.S. 825; cf. *Third Ave. Ry.* v. *Securities and Exchange Commission*, 85 F. 2d 914, 915 (C.A. 2); *Standard Fruit & S.S. Co.* v. *Midwest Stock Exch.*, 178 F. Supp. 669, 675 (N.D., Ill.).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

PETER A. DAMMANN,
General Counsel,
Securities and Exchange Commission.

MAY, 1963.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1963 686235 1158